

February 13, 2006

Attention: Section 1813 ROW Study
Office of Indian
Energy and Economic Development, 1849 C St., NW., Mail Stop
2749,
Washington, DC, 20240

Re: Participation of Warm Springs Tribe in Right of Way Study
and Consultation Request

Dear Sir:

I am writing this letter on behalf of the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon ("Tribe"). This letter is in response to the the Federal Register Notice published on December 29, 2005 regarding the Section 1813 Right of Way Study mandated by the Energy Policy Act of 2005. For the reasons stated below the Tribe conveys its interest in participating in the study process to the greatest extent possible and requests formal government-to-government consultation on this matter.

The Tribe occupies the Warm Springs Reservation in north Central Oregon comprised of approximately 640,000 acres. The Bonneville Power Administration maintains two transmission corridors across the Reservation, Portland General Electric Company maintains a major transmission line from its Pelton-Round Butte Hydroelectric Project (FERC Project 2030) ("Pelton Project") to the Willamette Valley, PacifiCorp and Wasco Electric PUD maintain transmission lines on the Reservation to serve their loads on the Reservation, and the Tribe has been engaged in negotiations with a gas company to construct a major gas pipeline lateral across the Reservation. The Tribe is also an energy producer as a co-licensee with PGE of the Pelton Project and as the owner of a small biomass generation project. The Tribe is also actively investigating the development of wind, geothermal and biomass renewable energy projects on the Reservation. The Tribe believes that it is a current and long-term major participant in the energy industry in the Pacific Northwest and is committed to the development of sustainable renewable energy resources. Because of all of the foregoing,

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the Right of Way Study may have important and long-term effects on the Tribe and the Reservation.

By way of background, the Treaty of June 25, 1855 (12 Stat. 963) defined the initial area of the Warm Springs Reservation and provides that the Tribe has the "exclusive use" of the Reservation. (Treaty of 1855, Article 1.) The Tribe is organized under section 16 of the Indian Reorganization Act ("IRA") of 1934. (25 USC § 476.) Pursuant to section 16, the Tribe adopted its Tribal Constitution and Bylaws in 1938, with the approval of the U.S. government through the Department of Interior.¹ The Tribal Constitution and Bylaws formally constituted a government for the Tribes through a Tribal Council. The Tribal Council is the central governing authority for the Tribes. Its jurisdiction "extend[s] to all lands contained within the present boundaries of the Warm Springs Reservation and to such lands as may have been heretofore or may hereafter be acquired by the Confederated Tribes of the Warm Springs Reservation or by the United States in trust for such tribes." (Tribal Constitution and Bylaws, Article II.) The Tribal Council has a combination of legislative, executive and judicial responsibilities which include the authority "to approve or veto any sale, disposition, lease or encumbrance of tribal lands, interests in lands, or other tribal assets which may be authorized or executed by the Secretary of the Interior, the Commissioner of Indian Affairs, or any other qualified official or agency of Government * * *" and "to exclude from the territory of the Confederated Tribes persons not legally entitled to reside therein under ordinances, which shall be subject to review by the Secretary of the Interior." (Tribal Constitution and Bylaws, Article V, Section 1(c) & (h).)

The Department of Interior, through the Bureau of Indian Affairs, is without authority to grant rights-of-way across tribal lands without the consent of the affected tribe. 25 USC § 324; see also 25 CFR § 169.3

¹ Constitution and By-Laws of the Confederated Tribes of Warm Springs Reservation of Oregon, As Amended, Approved February 14, 1938 (Approved by Oscar L. Chapman, Assistant Secretary of the Interior of the United States of America).

There is a long history of energy companies failing to provide compensation or under-compensating for tribal rights-of-way and Interior oversight has helped to ensure the current trend of fair compensation.

The Tribes have also adopted an Integrated Resources Management Plan ("IRMP") that governs all habitat-impacting activities on the Reservation. This tribal resource management program is a state-of-the art land management plan that seeks to implement the highest standards of resource management on the Reservation. Compliance with the IRMP is essential to maintaining, restoring and improving the integrity of tribal treaty resources. The IRMP has been approved by the Bureau of Indian Affairs as its Environmental Assessment for its management of the Reservation. Accordingly, any energy rights of way across Reservation land would need to be consistent with the IRMP among other applicable tribal laws. Tribal input on this issue is critical to ensuring such consistency.

In short, in the current environment of ongoing trust litigation, decisions regarding energy rights of way that affect tribal resources should be carefully considered and should be based on tribal consent.

The Tribe recognizes the lead agencies' intent to initiate government-to-government consultation as consistent with Executive Order 13175 and request that such consultation be initiated with the Tribe.

The Tribe requests that you include James Manion and Robert Brunoe in your scoping activities. Mr. Manion is responsible for managing the Tribe's interest in the Pelton Project, exploring further energy development opportunities and overseeing the Tribe's interests in energy rights of way. He is intimately familiar with our interests and can provide valuable insights into the issues of concern. Mr. Brunoe is General Manager of the Tribe's Department of Natural Resources and is responsible for overseeing actions that may affect the Tribe's resource interests, both on and off the Reservation. They will be assisted by one of our tribal attorneys, Jim Noteboom.

«Addressee Full Name»

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Second, we hereby request formal government-to-government consultation pursuant to Executive Order 13175 because of the importance of the study to the Tribe.

Very Truly Yours,

A handwritten signature in cursive script that reads "Ron Suppah".

Ron Suppah

Chairman, Tribal Council

Confederated Tribes of the Warm Springs Reservation of Oregon